IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7081 of 1996
With
SPECIAL CIVIL APPLICATION No. 7083 of 1996

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL BALABHAI JIVABHAI - Petitioner(s)

Versus

MAKODBHAI VELJIBHAI & 2 - Respondent(s)

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Appearance :
MR JITENDRA M PATEL for Petitioner(s) : 1,None for Petitioner(s) : None for Petitioner No(s).: for Petitioner(s) : 1.2.1,1.2.2
NOTICE SERVED BY DS for Respondent(s) : 1 - 2.
MR BJ JADEJA for Respondent(s) : 1,
Mr. P.D. Bhate, AGP for Respondent(s) : 3,
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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 29/12/2005

CAV

As common questions of law and facts arise in both these petitions, these petitions are being disposed of by this common judgment and order.

2. In both these petitions the respective petitioners have challenged the judgment and order dated 23rd August 1996 passed by the Gujarat Revenue Tribunal [“GRT” for short] in Revision Applications No. 459 of 1995 and 572 of 1995.

3. Few facts are necessary for the purpose of determination of the present Special Civil Applications which are as under;

The deceased Jivabhai Velabhai was tenant of land bearing Survey No. 35 admeasuring 3 acres and 5 gunthas and land bearing Survey No. 91 admeasuring 3 acres and 30 gunthas situate in Village Khijadiya, Taluka Gadhada, District-Bhavnagar and he cultivate the lands as tenant from 1950-51. Proceedings under Section 32-G of the Bombay Tenancy & Agricultural Lands Act, 1948 [hereinafter referred to as “the Act”] were initiated since 1975 and ultimately the same came to be finalized declaring the deceased as tenant and all those proceedings by which the deceased Jivabhai was declared as tenant under the provisions of the Act have become final. It appears that subsequently in the year 1979 the respondent No.1 purchased the said lands in question from the original-landowner. Thereafter on conclusion of the tenancy proceedings declaring the deceased as tenant, applications were submitted under Section 29 of the Act before the Mamlatdar, Gadhada for consequential order of possession and the Mamlatdar issued

necessary notices calling upon the subsequent purchaser also to show cause as to why he should not be evicted from the said lands and at that stage the subsequent purchaser respondent No.1 herein in both the petitions preferred Special Civil Applications No. 11700 of 1994, 11701 of 1994 and 11747 of 1994 and all the aforesaid Special Civil Applications came to be dismissed by observing that it will be open for the subsequent purchaser to take all the contentions available to them and until then their possession should be protected. That thereafter the Mamlatdar, Gadhada, after considering the contentions on behalf of the parties by common judgment and order dated 10th March 1995 passed the order of possession of both the survey numbers in favour of the petitioners. Being aggrieved and dissatisfied with the common order passed by the Mamlatdar, Gadhada dated 10th March 1995 the respondent No.1 preferred Tenancy Appeal No. 1/94-95 and Tenancy Appeal No. 2/94-95 respectively before the Deputy Collector, Palitana and the Deputy Collector, Palitana by judgment and order dated 4.8.1995 dismissed both the appeals. Being aggrieved and dissatisfied with the same, the respondent No.1 preferred Revision Applications No. TEN.BA. 459 of 1995 and 572 of 1995 before the GRT and the Tribunal by common judgment and order dated 23rd August 1996 allowed the aforesaid two Revision Applications filed by the respondent No.1 transferee on the ground that the applications submitted by the tenant for getting possession under Section 29 of the Act are not maintainable and it will be open for the tenant to

move an appropriate application under Section 32(1B) of the Act for restoration of possession. Being aggrieved and dissatisfied with the aforesaid common judgment and order passed by the GRT dated 23rd August 1996 in Revision Applications TEN.BA No. 459 of 1995 and 572 of 1995, the respective petitioners have preferred the present Special Civil Applications under Article 227 of the Constitution of India.

4. Shri JM Patel,learned advocate appearing on behalf of the respective petitioner tenants, has submitted that once the deceased petitioner was finally held to be tenant of the disputed lands and the said orders became final and thereafter the transferees were even heard, and ultimately the Mamlatdar, Gadhada passed an order on an application submitted by the petitioners for getting possession under Section 29 of the Act, the Tribunal was not justified in allowing the Revision Applications on the ground that the application under Section 29 of the Act is not maintaining and that the application under Section 32(1B) of the Act is required to be submitted. He has also further submitted that the Tribunal has committed an error in holding so inasmuch as there is no scope for remanding the matter for enquiry under Section 32(1B) of the Act. He has further submitted that when the deceased Jivabhai Velabhai was tenant since 1950-51 and therefore as on 1.4.1957 also he was the tenant and in view of Section 32 of the Act the deceased became

deemed purchaser of the lands and once he became deemed purchaser of the land the relationship between the parties i.e., to say between tenant and landowner ceased to exist, and the deceased became statutory owner of the land and thereafter the landlord or the transferee of the landlord has no concern with the land, and all the rights, title and interests of the landlord come to an end except to receive the purchase price under Section 32-G of the Act. He has further submitted that when all his rights, title and interests were extinguished as on 1.4.1957 the landlord has no further right to transfer the land in favour of any other person. He has relied upon the judgment of the Hon'ble Supreme Court in the case of reported in AIR 1993 S.C. 643 in support of his above submission. He has further submitted that Section 32(1B) of the Act presupposes that the tenant must be in possession of the land on 15.6.1955 and thereafter he is dispossessed by the landlord otherwise than in the manner provided in Section 29 or any other provision of the Act before 3.3.1973 and the land remained with the possession of the original landlord. He has also submitted that the said Section is not applicable to the tenant who has already become the deemed purchaser on 1.4.1957 and his status as tenant has become final between the parties, and therefore it is the right of the tenant to obtain possession by filing an application under Section 29 of the Act by which the tenant is entitled to get the possession of the land. It is further submitted that in the present case the proceedings

went upto the G.R.T.; the deceased became the tenant of the lands in question; the said orders have become final; and therefore the petitioners were entitled to possession under Section 29 of the Act. He has relied upon the judgment of this Court in the case of *Patel Shanabhai Vithalbhai Vs. Patel Bakorbhai Vithalbhai and Others,* reported in *AIR 1972 Gujarat 184* in support of his submission that once the tenant has become deemed purchaser as on 1.4.1957 it is not necessary for him to remain in possession on the Tillers Day and it is open for the tenant to recover possession from the landlord or any other person under Section 29 of the Act. According to him, the provisions of Section 32(1B) of the Act are applicable in case of a tenant in whose favour no order of deemed purchaser under Section 32 of the Act is passed declaring him to be the tenant as the deemed purchaser and therefore it is requested to allow the present Special Civil Applications.

5. On the other hand, Shri BJ Jadeja, learned advocate appearing on behalf of respondent No.1 transferees while supporting the judgment and order passed by the GRT has submitted that the GRT has rightly passed an order that the proceedings under Section 29 of the Act at the instance of the petitioner to get back possession were not maintainable and the only remedy was to submit an application under Section 32(1B) of the Act, and therefore the Tribunal has rightly remanded the

matter to the Mamlatdar & ALT, Gadhada for initiation of proceedings under Section 32(1B) of the Act. He has also further submitted that the tenant was required to submit an application for getting possession under Section 29 of the Act within the period of 2 years and the application under Section 29 of the Act was made by the petitioners after a period of 2 years, and therefore the orders passed by the Mamlatdar and ALT are rightly quashed and set aside directing the Mamlatdar & ALT, Gadhada to initiate proceedings afresh under Section 32(1B) of the Act. Therefore it is requested to dismiss both the Special Civil Applications as there is no jurisdictional error committed by the G.R.T.

6. Heard the learned advocates appearing for the parties. The lands in question were originally in the name of one Maganlal Kalidas and it appears that there was some partition between Maganlal Kalidas and his brother Hargovandas Kalidas. The name of deceased Jivabhai Velabhai was also entered in the Revenue record and thereafter the Mamlatdar, Gadhada started enquiry by registering Tenancy Case No. 1/1979 and 2/1979 and the Mamlatdar, Gadhada by judgment and order dated 31.3.1979 held that the deceased Jivabhai Velabhai was the tenant of the lands and the purchase price was also fixed for the said lands. It appears from the record that the Certificate under Section 32-M was also issued on 1.9.1979. It appears that the original landlords

Magandas Kalidas and Hargovandas Kalidas filed Tenancy Appeal No. 1/79-80 before the Deputy Collector, Palitana against the judgment and order dated 31.3.1979 passed by the Mamlatdar & ALT in Tenancy Case No. 1/1978-79 and 2/1978-79 and the Deputy Collector by order dated 22.6.1981 allowed the said appeal and remanded the case to the Mamlatdar and ALT. That thereafter, on remand, the Mamlatdar & ALT has upon Case No. 1/79 by judgment and order dated 2.6.1984 declared the deceased Jivabhai Velabhai as tenant of the lands bearing Survey No. 35 and 91. Being aggrieved and dissatisfied with the same, the original-landlord preferred Tenancy Appeal No. 343/1994 before the Deputy Collector, Palitana and the said appeal came to be dismissed by judgment and order dated 6.8.1994. It also appears from the record that the landlord Magandas Kalidas preferred revision application before the GRT being Revision Application No. 1261 of 1994 and the Tribunal remanded the matter to the Deputy Collector and the Deputy Collector again by judgment and order dated 30th July 1988 confirmed the judgment and order passed by the Mamlatdar & ALT dated 6.2.1984 holding the deceased Jivabhai Velabhai as tenant of lands of both survey numbers against which Revision Application No. 792/1988 came to be filed by the original-landlord before the GRT and the GRT by judgment and order dated 3.8.1993 dismissed the said revision application. Thus, the orders declaring deceased Jivabhai Velabhai as tenant has become final. In the meantime, the respondent No.1 purchased the lands in

question from the original landowner in the year 1979 and that is how the transferees have come in the picture. Thereafter, after dismissal of the Revision Application No. 792/1988 by order dated 3.8.1993 by order dated 3.8.1993, the petitioner submitted an application before the Mamlatdar and ALT in the year 1994 under Section 29 of the Act for getting possession and the Mamlatdar and ALT allowed the said applications and held that the petitioners are entitled to possession and directed the respondent No.1 to be evicted from the land which came to be confirmed by the Deputy Collector which came to be upset by the G.R.T., exercising the revisional jurisdiction mainly on the ground that application under Section 29 was not maintainable; that the orders passed under Section 32-G of the Act and the order dated 31.3.1979 were without jurisdiction and void ab initio from the very beginning; and therefore the order dated 31.3.1979 cannot be sustained. It is required to be noted that the finding of the GRT, to the effect that the order dated 31.3.1979 was without jurisdiction and void ab initio from the very beginning as the proceedings under Section 32-G of the Act for fixing the price were not maintainable at all, is not warranted and/or the same is illegal inasmuch as the said order was not under challenge before the G.R.T., and in fact by earlier judgment and order dated 3.8.1993 passed in Revision Application No. 792/1988, the said order was confirmed by the G.R.T., which has become final and therefore it was not open for the GRT to hold that

the order dated 31.3.1979 is illegal.

7. The learned advocate appearing for the petitioner has heavily relied upon the judgment of the Hon'ble Supreme Court in the case reported in AIR 1993 S.C. Page 643 (supra) as well as the order passed by the learned Single Judge of this Court in the case of *Patel Shanabhai Vithalbhai Vs. Patel Bakorbhai Vithalbhai and others, (supra).* It is required to be noted that deceased Jivabhai Velabhai has been declared as tenant under Section 32G of the Act, and as a consequence thereof the petitioner and/or the original tenant were required to be handed over the possession. It is the contention on behalf of the respondent No.1 that such an application under Section 29 is required to be made within the period of 2 years from the date on which right to possession of the land is deemed to have accrued to the tenant, which was, in the present case, the year 1979. It is required to be noted that thereafter several proceedings came to be initiated challenging the original order passed under Section 32G of the Act which came to be terminated in the year 1993 by dismissal of Revision Application No. 792/1988 by order dated 3.8.1993 and within the period of 2 years thereafter, the petitioner submitted an application under Section 29 of the Act. Therefore, as such it cannot be said that the application under Section 29 was beyond the prescribed period. Once the deceased has become the deemed tenant, he was entitled to the

possession. The learned advocate appearing for respondent No.1 has heavily relied upon Section 32(1B) of the Act. On going through the record and proceedings and the orders declaring the deceased Jivabhai as a tenant, the provisions of Section 32(1B) are not applicable at all. The provisions of Section 32(1B) would be applicable where a tenant who was in possession of the land on the appointed date and who on account of his being dispossessed of such land or any part thereof by the landlord at any time before the specified date otherwise than in the manner provided in Section 29 or any other provision of this Act is not in possession of such land or any part thereof and such land or part thereof is in possession of the landlord, and in that case the Mamlatdar notwithstanding anything contained in Section 29 or any other provision of the Act either suo motu or on an application of the tenant made within the prescribed period hold any enquiry and the possession is required to be restored to the tenant. From the bear reading of the provision of Section 32(1B) of the Act, it is crystal clear that the said proceedings are notwithstanding anything contained in Section 29 of the Act and/or any other provision under the Act. For invoking provision of section 32(1B) of the Act, other proceeding for declaring a person as a deemed tenant is not a precondition, and Section 32(1B) is an additional provision in favour of the tenant to get the possession. However, the same would not be applicable when there is already an order under Section 32-G of the Act declaring a

person as a deemed tenant and he approaches the authority within the period of 2 years from the date of accrual for taking possession and/or for declaring him to be the tenant/deemed purchaser. Therefore the G.R.T. has materially erred in holding that the application under Section 29 of the Act was maintainable and the provisions of Section 32(1B) are required to be initiated. It is required to be noted that the Bombay Tenancy & Agricultural Lands Act, 1948 is a benevolent Act to protect the rights of the tenant and on conclusion of the proceedings declaring a person as a tenant/deemed purchaser he will be entitled to get back the possession from the landlord and/or successor-in-title and the Tribunal is required to see that the purpose for which the Act is enacted is achieved and to protect the interests of the tenant to see that the possession of the land in question is handed over to the tenant.

8. For the reasons stated above, both the petitions succeed. The common judgment and order passed by the Gujarat Revenue Tribunal dated 23rd August 1996 in Revision Application No. 459 of 1995 and Revision Application No. 592 of 1995 is hereby quashed and set aside and the order passed by the Mamlatdar, Gadhada, as well as the Deputy Collector, Palitana under Section 29 of the Act are hereby restored, and it is held that the petitioners are entitled to the lands in question from the respondents and/or from the persons who are in

possession of the lands in question. Rule is made absolute to the aforesaid extent in both the matters. However, there will be no order as to costs.

[M.R. Shah, J.]

RMR.